



# PUBLIC NOTICE

**Federal Communications Commission**  
**445 12<sup>th</sup> Street, SW**  
**Washington, DC 20554**

**News Media Information: 202-418-0500**  
**Internet: [www.fcc.gov](http://www.fcc.gov)**  
**TTY: 888-835-5322**

**DA 18-1035**  
**October 10, 2018**

## **AUCTIONS OF UPPER MICROWAVE FLEXIBLE USE LICENSES FOR NEXT-GENERATION WIRELESS SERVICES**

### **STATUS OF SHORT-FORM APPLICATIONS TO PARTICIPATE IN AUCTIONS 101 (28 GHz) AND 102 (24 GHz)**

AU Docket No. 18-85

1. By this Public Notice, the Wireless Telecommunications Bureau (Bureau) announces the status of the 110 short-form applications received for Auctions 101 and 102. Auction 101, which is scheduled to begin on Wednesday, November 14, 2018, will offer 3,072 Upper Microwave Flexible Use Service (UMFUS) licenses in the 27.5–28.35 GHz (28 GHz) band.<sup>1</sup> Auction 102, which will be scheduled to begin after the conclusion of bidding in Auction 101, will offer 2,909 UMFUS licenses in the 24.25–24.45 GHz and 24.75–25.25 GHz (24 GHz) band.<sup>2</sup> This Public Notice also provides important information regarding the modification and resubmission of short-form applications and reminds applicants of certain procedures the Commission adopted for these auctions.

#### **I. SHORT-FORM APPLICATIONS AND UPFRONT PAYMENTS**

##### **A. Status of Short-Form Applications**

2. The short-form applications for Auctions 101 and 102 (FCC Forms 175) have been reviewed for completeness and compliance with the Commission's rules, and have been classified into the categories listed below.

##### **Auction 101 (28 GHz)**

**Complete .....26 applications (see Attachment A)**

**Incomplete .....24 applications (see Attachment B)**

##### **Auction 102 (24 GHz)**

**Complete .....34 applications (see Attachment C)**

**Incomplete .....26 applications (see Attachment D)**

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<sup>1</sup> *Auctions of Upper Microwave Flexible Use Licenses for Next-Generation Wireless Services; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auctions 101 (28 GHz) and 102 (24 GHz); Bidding in Auction 101 Scheduled to Begin November 14, 2018*, Public Notice, FCC 18-109 at 3, 5, paras. 2, 6 (Aug. 3, 2018) (*Auctions 101 and 102 Procedures Public Notice*).

<sup>2</sup> *See id.* at 3, 5, paras. 2, 7; *Wireless Telecommunications Bureau Releases Updated List of Licenses to Be Offered in Auction 102 (24 GHz); Announces Adjustment to the Categories and Number of Generic License Blocks*, Public Notice, DA 18-835 at 1-2, paras. 1-3 (WTB Aug. 10, 2018).

3. **Complete Applications.** Attachments A and C to this Public Notice list the short-form applications for Auction 101 and 102, respectively, that are accepted for filing and complete. Each of these applicants will become a qualified bidder in the auction(s) for which it applied upon receipt by the Commission of the required upfront payment by the deadlines described below.<sup>3</sup> Each applicant must also maintain the accuracy of its short-form application as required by Sections 1.65 and 1.2105(b) of the Commission's rules.<sup>4</sup>

4. Designation of an application as complete indicates the applicant has provided the certifications and basic information concerning its qualifications that are required by the Commission's competitive bidding rules for participation in the auctions. Under the Commission's two-phased auction application process, a winning bidder must submit a long-form application after the close of the auction to demonstrate its qualifications to hold a Commission license and, if a bidding credit is requested, its eligibility for the bidding credit requested.<sup>5</sup> Thus, a determination that a short-form application is complete and complies with the Commission's competitive bidding rules and policies is not determinative of an applicant's qualifications to hold a license or of entitlement to a bidding credit. In the event that an applicant is found unqualified to be a Commission licensee, or ineligible for claimed designated entity benefits, it will be liable for any obligations incurred as a result of its participation in the auction.<sup>6</sup>

5. **Incomplete Applications.** Attachments B and D to this Public Notice list the short-form applications for Auctions 101 and 102, respectively, that are accepted for filing but found to be incomplete or otherwise deficient. Each of these applicants will receive a letter identifying the deficiency(ies) in its application. This letter will be sent to the contact person and contact address listed on the incomplete application via overnight delivery, along with a copy of this Public Notice. To become a qualified bidder in the auction(s) for which it applied, each applicant must resubmit its application, having corrected any deficiencies, prior to 6:00 p.m. ET on Tuesday, October 23, 2018, and make the required upfront payment by the applicable upfront payment deadline.<sup>7</sup> The upfront payment deadline for Auction 101 is October 23, 2018; the upfront payment deadline for Auction 102 will be announced after the conclusion of bidding in Auction 101.<sup>8</sup> Each applicant must also maintain the accuracy of its short-form application as required by Sections 1.65 and 1.2105(b) of the Commission's rules.<sup>9</sup>

#### **B. Submitting Upfront Payments for Auction 101**

6. Upfront payments and accompanying FCC Remittance Advice forms (FCC Form 159, February 2003 edition) for Auction 101 are due in the proper account at the U.S. Treasury **by 6:00 p.m.**

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<sup>3</sup> See Section I.B (Upfront Payments), below; 47 CFR § 1.2106 (upfront payment rule).

<sup>4</sup> 47 CFR §§ 1.65, 1.2105(b). These rules require each applicant in a competitive bidding proceeding to furnish additional or corrected information within five days of a significant occurrence, or to amend its short-form application no more than five days after the applicant becomes aware of the need for amendment. An applicant's obligation to make such a modification or amendment to its pending application continues until it is made. See *Procedural Amendments to Commission Part 1 Competitive Bidding Rules*, Order, 25 FCC Rcd 521, 522-23, paras. 6-8 (2010) (*Part 1 Procedural Amendments Order*); see also 47 CFR § 1.2105(c)(6) (requiring any applicant that makes or receives a prohibited communication to report such communication in writing to the Commission no later than five business days after the communication occurs).

<sup>5</sup> 47 CFR §§ 1.2107, 1.2109, 73.5005; see also *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Second Report and Order, 9 FCC Rcd 2348, 2376-77 paras. 163-68 (1994) (*Competitive Bidding Second Report and Order*).

<sup>6</sup> See generally 47 CFR § 1.2109.

<sup>7</sup> See *Auctions 101 and 102 Procedures Public Notice* at 16, para. 35; see 47 CFR §§ 1.2105(b), 1.2106.

<sup>8</sup> See *id.* at 51, para. 145 & n.303.

<sup>9</sup> 47 CFR §§ 1.65, 1.2105(b).

**Eastern Time (ET) on Tuesday, October 23, 2018.**<sup>10</sup> In order to meet the Commission's upfront payment deadline, an applicant's payment must be credited to the Commission's account by the deadline. **Payments must be made by wire transfer only in accordance with the instructions provided in the *Auctions 101 and 102 Procedures Public Notice* and the *Instructions for Completing and Submitting FCC Remittance Advice (FCC Form 159) for Auction 101 (28 GHz UMFUS Licenses)* guide.**<sup>11</sup> No other payment method is acceptable for this auction.<sup>12</sup> Each applicant is reminded to provide its FCC Registration Number (FRN) on the FCC Form 159 and to submit the same FRN with all future payments for Auction 101. At least one hour before placing the order for the wire transfer (but on the same business day), each applicant must fax a completed FCC Form 159 to the FCC at (202) 418-2843 or email to [RROGWireFaxes@fcc.gov](mailto:RROGWireFaxes@fcc.gov).

7. Each applicant is responsible for ensuring timely submission of its upfront payment and for timely filing of an accurate and complete FCC Remittance Advice Form (FCC Form 159).<sup>13</sup> An applicant should coordinate with its financial institution well ahead of the due date regarding its wire transfer and allow sufficient time for the wire transfer to be initiated and completed prior to the deadline. The Commission has repeatedly cautioned auction participants about the importance of planning ahead to prepare for unforeseen last-minute difficulties in making payments by wire transfer.<sup>14</sup> Each applicant should obtain confirmation from its financial institution that its wire transfer to the U.S. Treasury was successful and from Commission staff that the applicant's payment has been received by the Commission in the proper account. For confirmation from the Commission, an applicant may contact Gail Glasser of the Office of Managing Director's Revenue & Receivables Operations Group/Auctions at (202) 418-0578, or alternatively, Theresa Meeks at (202) 418-2945. Detailed information regarding upfront payments can be found in the *Auctions 101 and 102 Procedures Public Notice* under Section III.F,<sup>15</sup> and

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<sup>10</sup> The deadline for the submission of upfront payments for Auction 102 will be announced after the conclusion of bidding in Auction 101. See *Auctions 101 and 102 Procedures Public Notice* at 51, para. 145 & n.303; see also *id.* at 12, para. 25 n. 56 (directing the Bureau to prepare and release after the close of bidding in Auction 101 a public notice announcing the remainder of the pre-auction dates and deadlines for the Auction 102 pre-auction process).

<sup>11</sup> *Auctions 101 and 102 Procedures Public Notice* at 51-53, paras. 146-51. See also the *Instructions for Completing and Submitting FCC Remittance Advice (FCC Form 159) for Auction 101 (28 GHz UMFUS Licenses)* guide (released August 6, 2018) available under the "Education" tab at [www.fcc.gov/auction/101/](http://www.fcc.gov/auction/101/). The Bureau will prepare and release after the close of Auction 101 detailed instructions for submitting an FCC Form 159 for Auction 102. *Auctions 101 and 102 Procedures Public Notice* at 13, para. 27 n.58. A wire transfer is a transaction that is initiated through an applicant's bank. It authorizes the bank to wire funds from an applicant's account to the Commission's account.

<sup>12</sup> The Commission will not accept checks, credit cards, or automated clearing house (ACH) payments.

<sup>13</sup> Each applicant may access an electronic pre-filled version of the FCC Form 159 through the FCC auction application system. See *Auctions 101 and 102 Procedures Public Notice* at 51, para. 144. See also the *Instructions for Completing and Submitting FCC Remittance Advice (FCC Form 159) for Auction 101 (28 GHz UMFUS Licenses)* guide (released August 6, 2018) available under the "Education" tab at [www.fcc.gov/auction/101/](http://www.fcc.gov/auction/101/).

<sup>14</sup> See, e.g., Letter to Lee G. Petro, counsel for Four Corners Broadcasting, LLC, from Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, 25 FCC Rcd 9046 (WTB 2010); Letter to David G. O'Neil, counsel for Spectrum Acquisition, Inc., from Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, 23 FCC Rcd 4765 (WTB 2008); Letter to Patrick Shannon, counsel for Lynch 3G Communications Corp., from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, 18 FCC Rcd 11552 (WTB 2003).

<sup>15</sup> *Auctions 101 and 102 Procedures Public Notice* at 51-53, paras. 144-51.

the *Instructions for Completing and Submitting FCC Remittance Advice (FCC Form 159) for Auction 101 (28 GHz UMFUS Licenses)* guide available under the “Education” tab at [www.fcc.gov/auction/101/](http://www.fcc.gov/auction/101/).<sup>16</sup>

8. **Only upfront payments for Auction 101 will be accepted at this time.** For Auction 102, the deadline for submitting upfront payments and FCC Form 159 will be announced in a later public notice.

**C. Short-Form Application Changes and Resubmission**

9. Each applicant whose application for Auction 101 or Auction 102 has been identified as incomplete must address defects in its application during the resubmission window, which is now open.<sup>17</sup> Corrected Auction 101 and Auction 102 applications must be filed **prior to 6:00 p.m. ET on Tuesday, October 23, 2018.**<sup>18</sup> Any short-form application corrections must be made electronically using the FCC’s auction application system. This will be the only opportunity to cure application defects. Late resubmissions will not be accepted. If an application for Auction 101 or Auction 102 is incomplete or otherwise deficient after the resubmission deadline has passed, the applicant will not be permitted to participate in bidding in the respective auction.<sup>19</sup>

10. During the resubmission window, each Auction 101 and 102 applicant may log in to the FCC’s auction application system and make certain changes to its application(s).<sup>20</sup> An applicant can view all of the contents of its application, but the electronic FCC Form 175 will not permit an applicant to make changes to its license or license area selections<sup>21</sup> or to the following data fields: applicant name, legal classification, certifier, or bidding credit. Administrative and minor changes can be made, including, for example, deletion and addition of authorized bidders (to a maximum of three), revision of addresses and telephone numbers of the applicant and its contact person, and changes to responsible party. While changes can be made to ownership and agreement information,<sup>22</sup> we remind each applicant

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<sup>16</sup> *Wireless Telecommunications Bureau Announces Availability of FCC Form 175 Application Instructions for Auctions 101 and 102; FCC Form 159 Instructions for Auction 101 Upfront Payments; and Technical Guides for Auction 102 Bidding*, Public Notice, DA 18-817 at 2, para. 4 (WTB Aug. 6, 2018).

<sup>17</sup> See 47 CFR § 1.2105(b)(2).

<sup>18</sup> In cases where an applicant has submitted applications for Auction 101 and 102 and its applications have been found to be incomplete, such applicant must correct both of its applications.

<sup>19</sup> Each of these applicants will retain its status as an applicant and will remain subject to the Commission’s rule prohibiting certain communications, 47 CFR §§ 1.2105(c), until the down payment deadline for Auction 102, but will not be eligible to bid in the respective auction. See *Auctions 101 and 102 Procedures Public Notice* at 25, para. 59 & n.137.

<sup>20</sup> During the resubmission phase, applicants will have electronic access to update the following application fields: jurisdiction of formation/country of citizenship, applicant address, responsible party information, responsible party address, contact information, contact address, authorized bidder information, bidding option (telephonic or electronic), agreement information, and ownership information. During the resubmission period, some required updates in an FCC Form 175 may need to be submitted by uploading an attachment. During all phases of the application process, applicants have electronic access to make certain administrative changes including updates to: applicant address, responsible party address, contact information, contact address, and bidding option (telephonic or electronic).

<sup>21</sup> In accordance with the license and license area selection process described in the *Auctions 101 and 102 Procedures Public Notice*, for any Auction 102 applicant that selected specific license blocks within a PEA, the FCC’s auction application system considers the applicant to have selected the PEA license area.

<sup>22</sup> For more information on making administrative changes to an existing application, see the *Auctions 101 and 102 Procedures Public Notice* at 44-45, paras. 114-20 (Modifying an FCC Form 175). See also the *Short-Form*

that any application changes must comply with the Commission's rules, which prohibit, among other things, changes in ownership that would constitute an assignment or transfer of control, as well as changes in ownership or agreements that would constitute violations of Section 1.2105(c).<sup>23</sup> If any application is changed to effect a major amendment, such as a change in control, the applicant will be ineligible to bid in the auction for which that application was submitted.<sup>24</sup>

11. We remind applicants that Sections 1.65 and 1.2105(b) of the Commission's rules require an applicant to maintain the accuracy and completeness of information furnished in its pending short-form application.<sup>25</sup> Each applicant should amend its short-form application to furnish additional or corrected information within five days of a significant occurrence, or no more than five days after the applicant becomes aware of the need for amendment.<sup>26</sup> To the extent that changes may be made directly in the electronic FCC Form 175 at the time of the amendment, an applicant must modify its short-form application electronically. An applicant seeking to report changes outside of the resubmission window must submit a letter briefly summarizing the changes by email to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, at the following addresses: [auction101@fcc.gov](mailto:auction101@fcc.gov) and/or [auction102@fcc.gov](mailto:auction102@fcc.gov), as applicable. Questions about changes should be directed to the Auctions and Spectrum Access Division at (202) 418-0660.

## II. OTHER IMPORTANT AUCTIONS 101 AND 102 INFORMATION

12. **Announcement of Qualified Bidders for Auction 101.** Following Commission review of resubmitted short-form applications and the correlation of upfront payments and applications, a public notice listing all applicants qualified to bid in Auction 101 will be released. The same public notice will also include bidding schedules for both the mock auction and the first day of bidding in Auction 101.

13. **Announcement of Complete Applications for Auction 102.** Concurrent with the release of the qualified bidders public notice for Auction 101, a separate public notice listing the final complete or incomplete status of all Auction 102 applications will be released. Auction 102 applicants with complete applications will become qualified bidders only after submitting a timely upfront payment for Auction 102. The deadline for Auction 102 upfront payments, instructions for making such payments, and other information concerning participation in Auction 102 will be announced after the conclusion of bidding in Auction 101.<sup>27</sup>

14. **Due Diligence.** Each potential bidder is solely responsible for investigating and evaluating all legal, technical and marketplace factors and risks associated with the licenses that it is seeking in Auction 101 or 102, evaluating the degree to which those factors and risks may have a bearing on the value of the licenses being offered and/or affect the bidder's ability to bid on, otherwise acquire, or make use of such licenses, and conducting any technical analyses necessary to assure itself that, if it wins any license(s), it will be able to build and operate facilities in accordance with the Commission's rules. Each potential bidder's due diligence efforts should include, among other things: (1) reviewing all

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*Application (FCC Form 175) Filing Instructions for Auction 101 and Auction 102 guide* (released August 6, 2018) available under the "Education" tab at [www.fcc.gov/auction/101/](http://www.fcc.gov/auction/101/).

<sup>23</sup> See 47 CFR § 1.2105(b)-(c).

<sup>24</sup> *Id.* § 1.2105(b)(2).

<sup>25</sup> See 47 CFR §§ 1.65, 1.2105(b).

<sup>26</sup> *Id.*

<sup>27</sup> *Auctions 101 and 102 Procedures Public Notice* at 51, para. 145 & n.303; see also *id.* at 12, para. 25 n. 56 (directing the Bureau to prepare and release after the close of bidding in Auction 101 a public notice announcing the remainder of the pre-auction dates and deadlines for the Auction 102 pre-auction process).

Commission orders and public notices establishing rules and policies for the UMFUS bands, including but not limited to potential impairments affecting certain licenses; (2) conducting research to determine the existence of any pending administrative or judicial proceedings that might affect its decision to participate in the auction;<sup>28</sup> (3) performing (or refreshing previous) technical analyses; and (4) inspecting any prospective transmitter sites located in, or near, the service area for which it plans to bid and confirming the availability of such sites and their conformance with applicable federal, state, and local land use requirements.<sup>29</sup> Each potential bidder must undertake its own assessment of the relevance and importance of information gathered as part of its due diligence efforts.

15. The Commission makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee, subject to certain conditions and regulations. Participants in either auction should continue such research throughout the respective auction. For further details regarding due diligence, please refer to the *Auctions 101 and 102 Procedures Public Notice*, Section III.A.<sup>30</sup>

16. **Prohibition of Certain Communications.** The Bureau reminds applicants that the rule prohibiting certain communications set forth in Section 1.2105(c) applies to each applicant that filed a short-form application (FCC Form 175) in Auction 101 or Auction 102.<sup>31</sup> Section 1.2105(c)(1) of the Commission's rules provides that, subject to specified exceptions, after the deadline for filing a short-form application, "all applicants are prohibited from cooperating or collaborating with respect to, communicating with or disclosing, to each other or any nationwide provider [of communications services] that is not an applicant, or, if the applicant is a nationwide provider, any non-nationwide provider that is not an applicant, in any manner the substance of their own, or each other's, or any other applicants' bids or bidding strategies (including post-auction market structure), or discussing or negotiating settlement agreements, until after the down payment deadline[.]"<sup>32</sup>

17. This prohibition took effect as of the short-form application filing deadline, which for Auctions 101 and 102 was Tuesday, September 18, at 6:00 p.m. ET, and ends at the post-auction down payment deadline for Auction 102, which will be announced in a future public notice.<sup>33</sup> **This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid in Auction 101 and/or Auction 102.**<sup>34</sup>

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<sup>28</sup> The Commission's statutory authority under the Communications Act to add, modify, and eliminate rules governing spectrum use, as the public interest warrants, applies equally to all licenses, whether acquired through the competitive bidding process or otherwise. See 47 U.S.C. § 309(j)(6)(C)-(D); *Celtronix Telemetry, Inc. v. FCC*, 272 F.3d 585 (D.C. Cir. 2001).

<sup>29</sup> See, e.g., 47 U.S.C. §§ 332(c)(7), 1455(a).

<sup>30</sup> See *id.* at 46, paras. 121-25 (Due Diligence).

<sup>31</sup> *Auctions 101 and 102 Procedures Public Notice* at 24, para. 57; see also 47 CFR § 1.2105(c)(1).

<sup>32</sup> 47 CFR § 1.2105(c). The Commission identified AT&T, Sprint, T-Mobile, and Verizon Wireless as "nationwide providers" for the purpose of implementing the Commission's competitive bidding rules in Auctions 101 and 102. *Auctions 101 and 102 Procedures Public Notice* at 19, para. 44.

<sup>33</sup> *Auctions 101 and 102 Procedures Public Notice* at 25, para. 60; see also 47 CFR § 1.2105(c)(1).

<sup>34</sup> A party that submits an application for either auction becomes an "applicant" under the rule at the application filing deadline and that status does not change based on subsequent developments. See, e.g., *Star Wireless, LLC v. FCC*, 522 F.3d 469 (D.C. Cir. 2008) (holding that Section 1.2105(c) applies to applicants regardless of whether they are qualified to bid). Thus, an auction applicant that does not correct deficiencies in its application, fails to submit a timely and sufficient upfront payment, or does not otherwise become qualified, remains an "applicant" for purposes

18. We also emphasize that, for purposes of this prohibition, an “applicant” includes all controlling interests of the entity submitting a short-form application to participate in the auction—including all officers and directors of that entity and all holders of interests amounting to 10 percent or more of the entity submitting a short-form application in Auction 101 and/or Auction 102.<sup>35</sup> Thus, for example, a violation of Section 1.2105(c) of the Commission’s rules could occur when an individual serves as an officer and/or director for two or more Auction 101 or Auction 102 applicants, whether those applicants are applying in the same auction (i.e., two Auction 101 applicants) or different auctions (i.e., one Auction 101 applicant and one Auction 102 applicant).<sup>36</sup> Therefore, applicants should continue to take precautionary steps to prevent prohibited communications between any of the entities or persons described covered by the prohibition.<sup>37</sup>

19. In connection with 2015 amendments to the competitive bidding rules, the Commission now prohibits most joint bidding arrangements, including any arrangement relating to the permits or licenses being auctioned that address or communicate, directly or indirectly, bidding at the auction, bidding strategies, including any arrangement regarding price or the specific permits or licenses on which to bid, and any such arrangement relating to the post-auction market structure.<sup>38</sup> The revised rule provides limited exceptions for a communication within the scope of any arrangement consistent with the exclusions from the Commission’s rule prohibiting joint bidding, provided such arrangement is disclosed on the applicant’s auction application.<sup>39</sup> An applicant may continue to communicate pursuant to any pre-existing agreement, arrangement, or understanding that is solely operational in nature or that provides for transfer or assignment of license, provided that such agreement, arrangement or understanding does not involve the communication or coordination of bids (including amounts), bidding strategies, or the particular permits or licenses on which to bid, and provided that such agreement, arrangement or understanding is disclosed on its application.<sup>40</sup>

20. The rule prohibiting joint bidding arrangements applies to any applicant for Auction 101 or Auction 102 (including any party that controls or is controlled by such applicant), and not just to

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of the rule and remains subject to the prohibition on certain communications until the Auction 102 down payment deadline. *Auctions 101 and 102 Procedures Public Notice* at 25, para. 59 & n.137.

<sup>35</sup> *Auctions 101 and 102 Procedures Public Notice* at 25, para. 59; see also 47 CFR § 1.2105(c)(7)(i).

<sup>36</sup> See, e.g., *Lotus Communications Corp.*, Order, 23 FCC Rcd 9107 (WTB 2008) (affirming finding of apparent violation of communication prohibitions of Section 1.2105(c) when one individual served as officer for two auction applicants); Letter to Colby M. May, TCCSA, Inc., from Barbara A. Kreisman, Chief, Video Division, and Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, 20 FCC Rcd 14648 (WTB/MB 2005) (finding apparent violation of communication prohibitions of Section 1.2105(c) where applicants shared same individual as an officer and director).

<sup>37</sup> See *Application of Nevada Wireless*, Memorandum Opinion and Order, 13 FCC Rcd 11973, 11977-78, paras. 11-13 (WTB 1998). The Bureau cautions, however, that the mere existence of precautionary measures will not outweigh specific evidence of prohibited communications, nor will it preclude the initiation of an investigation when warranted. *Id.* at 11978, para. 13.

<sup>38</sup> *Updating Part 1 Competitive Bidding Rules*, Report and Order, Order on Reconsideration of the First Report and Order, Third Order on Reconsideration of the Second Report and Order, Third Report and Order, 30 FCC Rcd 7493, 7575-76, para. 195 (2015) (*Updating Part 1 Report & Order*) (modified by Erratum, 30 FCC Rcd 8518 (2015)); see also 47 CFR § 1.2105(a)(2)(ix).

<sup>39</sup> 47 CFR § 1.2105(a)(2)(ix); see also *Updating Part 1 Report and Order*, 30 FCC Rcd at 7576-77, paras. 197-99.

<sup>40</sup> *Updating Part 1 Report and Order*, 30 FCC Rcd at 7576-77, paras. 197-99; see also generally *Guidance Regarding the Prohibition of Certain Communications During the Incentive Auction, Auction 1000*, Public Notice, 30 FCC Rcd 10794 (WTB 2015) (*Prohibited Communications Public Notice*).

applicants for the same auction.<sup>41</sup> Also, for the purpose of implementing our competitive bidding rules in Auctions 101 and 102, the “licenses being auctioned” and “licenses at auction” include all of the licenses being offered in Auctions 101 and 102.<sup>42</sup>

21. **Anonymous Bidding.** We remind applicants that, under the anonymous bidding procedures in effect for Auctions 101 and 102, the Commission is withholding from public release, until after the close of bidding in Auction 102, any information that may indicate specific applicants’ interests in the auction—including, among other things, license or license area selections, upfront payments and eligibility information, and the identities of bidders placing bids or taking other bidding-related actions.<sup>43</sup> Accordingly, communication with other applicants or public disclosure of such non-public information may violate the Commission’s anonymous bidding procedures and the rule prohibiting certain communications, Section 1.2105(c) of the Commission’s rules.<sup>44</sup>

22. This prohibition would include communication of any such non-public information by an applicant to the public, financial analysts, or the press, as well as any such communication by an applicant to another applicant in Auction 101 or Auction 102.<sup>45</sup> Examples of communications raising concern, given the anonymous bidding procedures in effect for Auctions 101 and 102, would include an applicant’s statement to the press about its upfront payment or bidding eligibility, and an applicant’s statement to the press that it is or is not interested in bidding in the auction.

23. **Disclosure Obligations and Possible Sanctions.** Section 1.2105(c)(4) requires each auction applicant to report a prohibited discussion or disclosure regarding bids or bidding strategy to the Commission in writing immediately, but in no case later than five business days after the communication occurs, even if the communication does not result in an agreement or understanding regarding bids or bidding strategy that must be reported under Section 1.65.<sup>46</sup> The Commission has clarified that each applicant’s obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.<sup>47</sup>

24. **Reporting Prohibited Communications.** A party reporting any communication pursuant to Sections 1.65, 1.2105(a)(2), or 1.2105(c)(4) must take care to ensure that any report of a prohibited communication does not itself give rise to a violation of Section 1.2105(c). For example, a party’s report of a prohibited communication could violate the rule by communicating prohibited

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<sup>41</sup> *Auctions 101 and 102 Procedures Public Notice* at 19-20, para. 44.

<sup>42</sup> *Id.* at 20, para. 44.

<sup>43</sup> *See generally id.* at 22-24, paras. 50-56.

<sup>44</sup> For purposes of Section 1.2105(c), the term “applicant” includes all controlling interests, all parties with ownership interests greater than 10 percent, and all officers and directors of an applicant for Auction 101 and/or Auction 102. *See* 47 CFR § 1.2105(c)(7).

<sup>45</sup> The Commission has long expressed the concern that applicants should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become a conduit for the communication of non-public information relating to auctions, such as bids and bidding strategies. *See Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction*, Public Notice, 13 FCC Rcd 341, 347-48 (WTB 1998) (“Public statements can give rise to collusion concerns. This has occurred in the antitrust context, where certain public statements can support other evidence which tends to indicate the existence of a conspiracy.”).

<sup>46</sup> 47 CFR § 1.2105(c)(4); *see also Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures*, Seventh Report and Order, 16 FCC Rcd 17546, 17553-55, paras. 13-17 (2001).

<sup>47</sup> *See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, Second Report and Order, 22 FCC Rcd 15289, 15395, paras. 285-86 (2007).



information to other applicants through the use of Commission filing procedures that would allow such materials to be made available for public inspection.

25. The Commission amended Section 1.2105(c) to minimize the risk of inadvertent dissemination of information by requiring any party to file only a single report concerning a prohibited communication and to file that report with Commission personnel expressly charged with administering the Commission's auctions.<sup>48</sup> Pursuant to the rule, any report required by Section 1.2105(c) must be filed consistent with the instructions set forth in the *Auctions 101 and 102 Procedures Public Notice*.<sup>49</sup>

26. A party seeking to report such a prohibited communication is also encouraged to consult with the Auctions and Spectrum Access Division staff if it has any questions about the procedures for submitting such reports.<sup>50</sup> The *Auctions 101 and 102 Procedures Public Notice* provides additional guidance on procedures for submitting application-related information.<sup>51</sup>

27. Each applicant that is a winning bidder will be required to disclose in its long-form application the specific terms, conditions, and parties involved in any bidding consortia, joint ventures, partnerships, or other agreements, understandings, or arrangements entered into relating to the competitive bidding process.<sup>52</sup> Any applicant found to have violated Section 1.2105(c) of the Commission's rules may be subject to sanctions.<sup>53</sup> In addition, we remind applicants that they are subject to the antitrust laws, which are designed to prevent anti-competitive behavior in the marketplace.<sup>54</sup> If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount, and may be prohibited from participating in future auctions, among other sanctions.<sup>55</sup>

28. **Ex Parte Rule.** Applicants should also be aware that the Commission has generally treated mutually exclusive short-form applications to participate in the auctions process as exempt proceedings and, therefore, not subject to the *ex parte* prohibitions that pertain to restricted proceedings.<sup>56</sup>

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<sup>48</sup> *Part 1 Procedural Amendments Order*, 25 FCC Rcd at 522, para. 4.

<sup>49</sup> *Auctions 101 and 102 Procedures Public Notice* at 30-31, paras. 78-80.

<sup>50</sup> See Section III (Contact Information), below.

<sup>51</sup> See *Auctions 101 and 102 Procedures Public Notice* at 30-31, paras. 78-80.

<sup>52</sup> See 47 CFR § 1.2107(d).

<sup>53</sup> See 47 CFR §§ 1.2105(c), 1.2109(d).

<sup>54</sup> See *Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures*, Third Further Notice of Proposed Rulemaking, 14 FCC Rcd 21558, 21560-61, para. 4 & n.17 (1999) (“[W]e wish to emphasize that all applicants and their owners continue to be subject to existing antitrust laws. Applicants should note that conduct that is permissible under the Commission's Rules may be prohibited by the antitrust laws.” (quoting *Competitive Bidding Memorandum Opinion and Order*, 9 FCC Rcd at 7689, para. 12)); *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Fourth Memorandum Opinion and Order, 9 FCC Rcd 6858, 6869 n. 134 (1994) (“[A]pplicants will also be subject to existing antitrust laws.”).

<sup>55</sup> See 47 CFR § 1.2109(d); *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388, para. 226.

<sup>56</sup> See generally *Commission Announces that Mutually Exclusive “Short-Form” Applications (Form 175) to Participate in Competitive Bidding Process (“Auctions”) Are Treated as Exempt for Ex Parte Purposes*, Public Notice, 9 FCC Rcd 6760 (1994); see also 47 CFR § 1.1202(d)(1) Note 1.

### III. CONTACT INFORMATION

29. For specific questions about an applicant's incomplete status or its application deficiencies, the applicant should contact the staff reviewer identified in the correspondence sent to the applicant by overnight mail.

30. For further information concerning Auctions 101 and 102, contact:

**General Auction Information**

General Auction Questions

**FCC Auctions Hotline**(888) 225-5322, option two; or  
(717) 338-2868**Auction 101 Process and Procedures**

Bidding Procedures

Auction Schedule

**Auctions and Spectrum Access Division**

Auctions Hotline 717-338-2868

**Auction 101 Legal Information**Auction Rules, Policies, Regulations, Including  
Reports of Section 1.2105(c) Violations and  
Application Modifications**Auctions and Spectrum Access Division**

(202) 418-0660

Erik Beith (Attorney)

Kathryn Hinton (Attorney)

**Licensing Information**

Service Rules, Policies, Regulations

Licensing Issues, Engineering Issues

Due Diligence, Incumbency Issues

**Broadband Division**

(202) 418-2487

Nancy Zaczek (Attorney)

Tim Hilfiger (Engineer)

**Technical Support**

Electronic Filings

Auction Application System and Auction

Bidding System (Hardware/Software Issues)

**FCC Auctions Technical Support Hotline**

(877) 480-3201, option nine; or (202) 414-1250

(202) 414-1255 (TTY)

Hours of service: 8:00 a.m. – 6:00 p.m. ET,

Monday through Friday

**Payment Information**Instructions for Wiring Upfront Payments and  
Completing Form 159**FCC Revenue & Receivables Operations  
Group/Auctions**

Gail Glasser (202) 418-0578, or

Theresa Meeks (202) 418-2945, or

(202) 418-2843 (fax)

31. To request materials in accessible formats (Braille, large print, electronic files, audio format) for people with disabilities, send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 or (202) 418-0432 (TTY).

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